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In re Application of BERTHELOON et al.	:	DECISION ON
Application No.: 10/019,683	:	
PCT No.: PCT/EP00/06230	:	PETITION UNDER
Int. Filing: 04 July 2000	:	
Priority Date: 06 July 1999	:	37 CFR 1.181
Attorney Docket No.: MERCK 2358	:	
For: DIHYDROBENZODIAZEPINS AND	:	
THEIR USE FOR TREATING DYSLIPIDEMIA	:	

This is a decision on applicant's "Petition to Withdraw the Holding of Abandonment Or Alternatively, Petition under 37 CFR 1.137(b) to Revive an Unintentionally Abandoned Application", filed with the United States Patent and Trademark Office (USPTO) on 20 May 2004. Applicant requests that the application's abandoned status be withdrawn on the grounds that they did not receive the Office action mailed on 10 September 2002. The petition is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 11 March 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the \$130 surcharge for filing the oath or declaration after the thirty month period was required. On 11 June 2002, applicant filed a petition under 37 CFR 1.47(a) requesting acceptance of the application without the signature of Frederic Ausseil. On 10 September 2002, a decision dismissing the petition was mailed to applicant, indicating that the evidence provided did not support a finding that the inventor was unavailable after diligent effort and that the declaration provided did not comply with 37 CFR 1.497(a)(2).

On 30 January 2004, a Notification of Defective Response Abandonment was mailed to applicant, indicating that applicant had failed to respond to the 10 September 2002 Office action.

On 20 May 2004, applicant filed the instant petition requesting that the abandonment of application be withdrawn on the basis that the 10 September 2002 Office action was never received.

DISCUSSION

To withdraw the holding of abandonment, a proper showing is necessary in order to establish that papers were not received. As set forth in the Official Gazette at 1156 OG 53, the proper showing must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file

jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement).

Items (1) and (2) are satisfied by the practitioner's statement that the Office action was not received by the practitioner and his statement attesting that a search of the file jacket and docket records indicated that the Office action was not received.

With regard to Item (3), the docket record required is the record showing all responses docketed for the date a response was due (10 November 2002 in this case) indicating that there was no record of a response for the present application being due on that date. This docket record was attached to and referenced in practitioner's statement and indicates that the Office communication in this application was not received. Thus, applicant has provided the proper showing necessary to withdraw the holding of abandonment and the petition may be properly granted at this time.

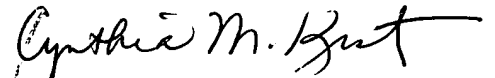
On 20 May 2004, applicant submitted a declaration executed by all the inventors, which meets the requirements of 37 CFR 1.497(a) and (b) and is acceptable.

CONCLUSION

For the reasons presented above, the Petition under 37 CFR 1.181 is GRANTED.

The 30 January 2004 Notification of Defective Response Abandonment (Form PCT/DO/EO/909) is hereby VACATED.

The application will be forwarded to the United States Designated/Elected Office for further processing. The declaration fulfills the requirements of 37 CFR 1.497(a) and (b). The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) is **20 May 2004**.


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